

Supreme Court, U.S.  
FILED

05-651 OCT 17 2005

NO. \_\_\_\_\_

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
CALVIN DAVID FOX,

Petitioner,

vs.

THE STATE OF FLORIDA and Executive Director  
of The FLORIDA BAR, John Harkness,

Respondents.

\_\_\_\_\_  
ON PETITION FOR CERTIORARI TO THE  
U.S. ELEVENTH CIRCUIT COURT OF APPEAL

\_\_\_\_\_  
PETITIONER FOR WRIT OF CERTIORARI

\_\_\_\_\_  
CALVIN DAVID FOX  
Post Office Box 7900  
Jupiter, Florida 33468  
(954) 383-5943

## STATEMENT OF ISSUES

- 1.) May the Rooker-Feldman Doctrine, which bars lower federal courts from conducting de facto review of final decisions by state courts, be expansively interpreted to include preclusion principles and divest federal courts of jurisdiction, where the state court decision is not final, but temporary and interlocutory?
- 2.) May the Rooker-Feldman Doctrine be expansively interpreted to preclude federal jurisdiction over federal claims, which have not been litigated and for which there has been neither an opportunity to litigate nor has any court ever ruled upon the federal claims?
- 3.) Is the State of Florida entitled to sovereign immunity, where the Florida Supreme Court in Department of Revenue v. Kuhnlein, 647 So.2d 717, at 721 (Fla. 1994) held that the State of Florida has no immunity from suit for federal or state constitutional violations and all state employees are insured against federal and state constitutional claims?
- 4.) Are attorneys, like ax murderers and other citizens, entitled to due process and equal protection and therefore is Florida's public policy for prosecuting attorneys that attorneys have no personal rights, unconstitutional per se and/or as applied?

5.) May the State of Florida by its public policy in prosecuting attorneys, that attorneys have no rights, circumvent Attorney/Client privilege and due process and force attorneys, as it attempted to do in the case at bar, to chose between defending themselves against an accusation and public disclosure of Attorney/Client confidences versus honoring the Attorney/Client privilege of confidentiality?

6.) May the Petitioner seek prospective relief against the State of Florida, the Florida Supreme Court and the Florida Bar and its Attorney Disciplinary Division and/or seek relief and damages against individuals named herein for the unconstitutional practices in the case at bar and for the unbridled misconduct of the Florida Bar Attorney Disciplinary Division and/or its employees?

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
STATEMENT OF ISSUES .....	ii-iii
TABLE OF CITATIONS .....	v-xi
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS .....	2
STATEMENT OF PROCEEDINGS .....	3-17
REASONS FOR GRANTING WRIT .....	17-30
CONCLUSION .....	30
APPENDIX .....	31

v  
**TABLE OF CITATIONS**

<b><u>UNITED STATES CASES</u></b>	<b><u>PAGE</u></b>
<u>Alden v. Maine</u> 527 U.S. 706 (1999).....	1,19
<u>Anderson v. Creighton,</u> 483 U.S. 635 (1987).....	2
<u>Baldwin v. Hale,</u> 68 U.S. (1 Wall.) 233 17 L.Ed. 531 (1864).....	22
<u>Bell v. Burson,</u> 402 U.S. 535 (1971).....	21
<u>Chandler v. Florida,</u> 449 U.S. 560 (1981).....	21
<u>Cleveland v. Loudermill,</u> 470 U.S. 532 (1985).....	21
<u>D.C Circuit v. Feldman</u> 460 U.S. 388 (1982).....	1,17
<u>Exxon Mobil v. Saudi Industries,</u> ___ U.S. ___, 125.Ct.1517 (2005).....	1,17,18
<u>Florida v. Rodriguez,</u> 469 U.S. 1 (1984).....	21,30

<u>Florida v. Rodriguez,</u> 461 U.S. 940 (1983) ..	21
<u>Florida v. Royer,</u> 460 U.S. 491(1983) ..	21
<u>Florida v. Zafra,</u> 463 U.S. 1202(1983) ..	21
<u>Fox v. Florida,</u> U.S.Case 99-1887(10/02/00).....	3,6,13
<u>Fusari v. Steinberg,</u> 419 U.S. 379(1975).....	21
<u>Goldberg v. Kelly,</u> 397 U.S. 254 (1970).....	21,22
<u>Hagar v. Reclamation District,</u> 111 U.S. 701(1884) ..	22
<u>Huttoe v. Finney,</u> 437 U.S. 678 (1978).....	2
<u>Loudermill v. Cleveland Board of Edu</u> 470 U.S. 532 (1987) ..	2,24,25
<u>Market Street Railway v. RR Commission,</u> 324 U.S. 548 (1944) ..	14

<u>Pulliam v. Allen,</u>	
466 U.S. 522 (1984) .....	1
<u>Plyler v. Doe,</u>	
457 U.S. 202 (1982) .....	30
<u>Republic Natural Gas v. Oklahoma,</u>	
334 U.S. 62 (1948) .....	13
<u>Rider v. Florida,</u>	
470 U.S. 1075 (1985) .....	21
<u>Sniadach v. Family Finance,</u>	
395 U.S. 337 (1969) .....	21
<u>Strickland v. Washington,</u>	
466 U.S. 668 (1985) .....	21
<u>Supreme Court of Va. V. Va. Consumers,</u>	
446 U.S. 719 (1980) .....	1,19
<u>Swidler &amp; Berlin v. United States,</u>	
524 U.S.399(1998) .....	26, 27
<u>United States v. Ryan,</u>	
402 U.S. 530 (1971) .....	13
<u>Upjohn v. United States,</u>	
449 U.S. 383 (1981) .....	26

<u>Verizon, Maryland v. Public of Md,</u> 535 U.S. (2002).	19
---	----

<u>Will v. Michigan,</u> 491 U.S. 58 (1989)	1
--	---

## **UNITED STATES CONSTITUTION**

14th Amendment, U.S. Constitution	2
-----------------------------------	---

## **UNITED STATES RULES**

Rule 501 Federal Rules of Evidence	2
------------------------------------	---

## **UNITED STATES CODE**

Title 28 U.S. Code Section 1257(a)	2, 16, 23
Title 28 U.S. Code Section 1254	1
Title 42 U.S. Code Section 1983	3

## **FLORIDA RULES**

Resolution of the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts	10, 24
---	--------



Rule 9.300(b) Florida Rules of Appellate Procedure .....	30
---	----

Rule 9.340(b) Florida Rules of Appellate Procedure .....	30
---	----

Rule 5-1.2(f) Florida Rules of Trust Accounting and Procedures .....	22,29
--	-------

## FLORIDA CASES

<u>Del Carmen Calzon v. Capital Bank,</u> 689 So.2d 279 (Fla.3dDCA 1995) .....	26
---	----

<u>Delk, D.D.S. v. Department of</u> <u>Professional Regulation,</u> 595 So.2d 966(Fla.5 <sup>th</sup> DCA 1992) .....	22
--	----

<u>Department of Revenue v. Kuhnlein,</u> 646 So.2d 717 (Fla. 1994) .....	ii
--	----

<u>Haskell Co. v. Georgia Pacific Co.,</u> 684 So.2d 297 (Fla.5 <sup>th</sup> DCA 1996) .....	26
--	----

<u>Kier v. State,</u> 152 Fla. 389, 11 So.2d 886 (1943) .....	26
---	----

<u>Mueller v. The Florida Bar,</u> 390 So.2d 449 (Fla.4 <sup>th</sup> DCA 1980) . . . . .	11,15
<u>Schetter v. Schetter,</u> 239 So.2d 51 (Fla.4 <sup>th</sup> DCA 1970). . . . .	26
<u>Seaboard Air Line Ry v. Parker,</u> 65 Fla. 543, 62 So. 589 (1913) . . . . .	26
<u>Wilson v. Wainwright,</u> 248 So.2d 249 (Fla.1 <sup>st</sup> DCA 1971). . . . .	27
<u>Woods v. Department of Transportation,</u> 325 So.2d 25 (Fla.4 <sup>th</sup> DCA 1976). . . . .	22

**OTHER AUTHORITIES**

Bandes, "The Rooker-Feldman Doctrine Evaluating Its Jurisdictional Status," 74 Notre Dame L.Rev. 1125 . . . . .	18
Brewer, "Due Process in Lawyer Discipline Cases: From the Cradle to the Grave," 42 South Car.L.Rev. 925 . . . . .	19
Friendly, "Some Kind of a Hearing," U.Pa.L.Rev. 1267 (1975) . . . . .	25
Florida Ethical Opinion 92-5 . . . . .	28

Papantino, M., <u><i>In Search of Atticus Finch</i></u> .....	27
Rowe, "The Rooker-Feldman Doctrine: Worth Only the Power to Blow it Up?" 74 Notre Dame L.Rev.1081 (1999). ....	18
Petition for Certiorari, <u><b>Exxon Mobil v. Saudi Industries</b></u> , ___ U.S. ___ 125 S.Ct. 1517 (2005) .....	18
18 Charles Alan Wright; Arthur Miller & Edward Cooper, <u><b>Federal Practice and Procedure</b></u> , Section 4469.1 at 657-658 (Supp. 2001) .....	19
The Palm Beach Post, "Florida Bar [Commission] Investigates Discipline for Lawyers," page 1A, March 2, 2004 .....	15

## **OPINIONS BELOW**

The opinion of the United States Eleventh Circuit Court of Appeals, dated June 17, 2005, is contained in the Appendix at A4-A11 and will be reported and widely cited in West's electronic case reporting system, as **Fox v. State**, \_\_ West Law \_\_ (11<sup>th</sup> Cir. June 17, 2005).

## **JURISDICTION**

On August 17, 2005 the U.S. Eleventh Circuit denied rehearing and rehearing en banc. A29-A30. The Petitioner invokes the Court's jurisdiction under Title 28 United States Code Section 1254.

This Court has direct conflict jurisdiction herein under this Court's recent decision in **Exxon Mobil Corp v. Saudi Basic Industries**, \_\_ U.S. \_\_, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) and **District of Columbia Court of Appeals v. Feldman**, 460 U.S.462, at 486 (1982), which each answered the first ISSUE above in the **negative**, contrary to the U.S. 11<sup>th</sup> Cir. and other Circuit and District Courts' expansion of the Rooker-Feldman doctrine to include non-final, interlocutory decisions of state courts.

This Court also has jurisdiction upon the misapplication of Rooker-Feldman, which precludes issues and directly conflicts with **Will v. Michigan**, 491 U.S. 58 (1989); **Alden v. Maine**, 527 U.S. 706 (1999); **Pulliam v. Allen**, 466 U.S. 522 (1984); **Supreme Court of Virginia v. Consumer's Union**, 446 U.S. 719 (1980); **Anderson v. Creighton**, 483